

Serial No. 10/027,744
Art Unit 3721
Atty Dkt PP 5.71(c)

Group X: Claim 84 (the Office action referred to this as group "IIX")
Group XI: Claim 89
Group XII: Claim 90
Group XIII: Claim 93

Pursuant to 37 CFR 1.143, applicant hereby provisionally elects Group I, claims 20-28, with traverse. Applicant respectfully requests reconsideration of the restriction requirement for the reasons set forth below.

Groups III through XIII encompass claims 36-94. As noted, however, in applicant's Preliminary Amendment filed April 9, 2002, claims 36-94 are identical to claims 1-59, respectively, of issued U.S. Patent No. 6,213,388. The U.S. Patent and Trademark Office, therefore, has already taken the position that these claims are not properly restrictable since they all appear in a single issued patent. Applicant requests that the Examiner give full faith and credit to this position and withdraw the restriction requirement in the present application with respect to Groups III through XIII.

It is noted that MPEP 706.04 sets forth the following (in pertinent part):

Full faith and credit should be given to the search and action of a previous examiner unless there is a clear error in the previous action or knowledge of other prior art. In general, an examiner should not take an entirely new approach or attempt to reorient the point of view of a previous examiner, or make a new search in the mere hope of finding something.

Although this portion of the MPEP is directed specifically toward a rejection of previously allowed claims, applicant asserts that the logic set forth readily applies to a restriction requirement as well. Applying this logic to the present situation, since restriction among claims 1-59 of U.S. Patent No.

6,213,388 was not required by a previous examiner during prosecution of the '388 patent, the Examiner in the present application should not now require restriction among the exact same claims unless there is a "clear error in the previous action". *Id.* Since the Examiner in the present application has not identified any "clear error" in the action by the previous examiner, full faith and credit should be given the previous action and the present restriction requirement as between Groups III through XIII should be withdrawn.

With respect to Groups I and II, as noted in applicant's Preliminary Amendment filed December 20, 2001, independent claim 20 (in Group I) is identical to claim 28 in the parent application of the present application. As also noted in applicant's Preliminary Amendment, independent claim 29 (in Group II) is identical to claim 22 in the parent application. Since the Examiner did not impose a restriction requirement between claims 20 and 22 in the parent application, the Examiner should give full faith and credit to the actions in the parent application and not now impose a restriction requirement between Groups I and II.

In addition to the above, applicant further asserts that the Examiner's restriction requirement is improper because the Examiner has not shown that a serious burden would be required to examine all of the claims. MPEP 803 sets forth the following:

If the search and examination of an entire application can be made without serious burden, the examiner must examine it on the merits, even though it includes claims to independent or distinct inventions.

Thus, for a restriction requirement to be proper, the Examiner must

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satisfy the following two criteria:

1. the existence of independent or distinct inventions; **and**
2. that the search and examination of the entire application cannot be made without serious burden.

The Examiner has not shown that the second requirement has been met.

Accordingly, for the reasons set forth above, applicant respectfully requests that the restriction requirement be withdrawn.

Respectfully submitted,

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